TWENTY-SECOND ANNUAL REPORT

1986-87

ONTARIO LAW REFORM COMMISSION

Ministry of the Attorney General

The Ontario Law Reform Commission was established on May 8, 1964 by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

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Chairman

H. ALLAN LEAL, OC, QC, LLM, LLD, DCL,
Vice Chairman

EARL A. CHERNIAK, QC

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MARGARET A. ROSS, BA (Hon.), LLB

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Ontario
Law Reform
Commission

To The Honourable Ian Scott, QC
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Twenty-Second Annual Report of the Ontario Law Reform Commission, for the period April 1, 1986 to March 31, 1987.

ONTARIO LAW REFORM COMMISSION

1987

Front Row, L to R: Mrs. Margaret A. Ross, Commissioner; Mr. James R. Breithaupt, Chairman; Ms. M. Patricia Richardson, Counsel

Second Row, L to R: Dean J. Robert S. Prichard, Commissioner; Dr. H. Allan Leal, Vice Chairman; Mr. Earl A. Cherniak, Commissioner

INTRODUCTION

This is the Twenty-Second Annual Report of the Ontario Law Reform Commission, for the period from April 1, 1986 to March 31, 1987. The year has seen three major Reports completed and others substantially advanced towards completion.

On December 16, 1985, the Attorney General gave to the Commission a Reference on Political Activity by Crown Employees, and requested that the Report be completed by July 1, 1986. Through the full commitment of all members of the staff, the Commissioners were able to deliver the Report to the Attorney General on June 27, 1986. The Report was tabled in the Ontario Legislature on July 11, 1986.

The *Report on Amendment of the Law of Contract* was delivered to the Attorney General on February 2, 1987 and tabled in the Ontario Legislature on March 18, 1987.

The *Report on the Law of Mortgages* was delivered to the Attorney General on March 31, 1987.

On April 7, 1986, the Attorney General met with the Commissioners at lunch in the Members' Dining Room of the Legislature. He welcomed the new Commissioners, Mr. Earl A. Cherniak, QC, Dean J. Robert S. Prichard and Mrs. Margaret A. Ross, and thanked the retiring Commissioners, the Honourable Richard A. Bell, PC, QC, LLD, and Mr. William R. Poole, QC, for their twenty-two years of service to the Commission. At the meeting of the Commission held on June 12, Dr. H. Allan Leal, the Vice Chairman, presented tributes to the Honourable Mr. Bell and Mr. Poole, which are attached to this Report as Appendix A.

In October, 1985, the Commission was asked by Mr. Brian C. Keith, of Borden & Elliot, Barristers and Solicitors, to consider the *Gold Clauses Act*, R.S.O. 1980, c. 189, and to recommend its repeal as being no longer of practical value with respect to certain foreign financing arrangements undertaken by Ontario residents. The Commission agreed with the proposal and recommended repeal to the Honourable Robert F. Nixon, the Treasurer of Ontario. Bill 130 was introduced on July 10, 1986 as an Act to repeal the *Gold Clauses Act*. The Bill received second reading on October 22 and both third reading and Royal Assent on November 4, as of which date it came into effect.

The Commission was saddened to learn of the death of Mr. Arthur A. Wishart, QC, the Attorney General for Ontario at the time the Commission was constituted. A testimonial to the late Mr. Wishart was recorded at the December meeting of the Commission. The testimonial was written by Dr. H. Allan Leal, the Vice Chairman, and is attached to this Report as Appendix B.

On March 10, 1987, the Commission welcomed the announcement of the award of the Law Society Medal to its Vice Chairman, Dr. Leal, in recognition of his outstanding service to the legal profession in accordance with its highest ideals.

As in previous years, the Commission has continued to receive various suggestions for reform and for additions to the general programme from members of the judiciary, the legal profession and the public. The Commission appreciates the interest taken in its work and extends sincere thanks to all of those who have taken the time to assist it.

THE PROGRAMME: REFERRED MATTERS

Section 2(1)(d) of the *Ontario Law Reform Commission Act* requires the Commission to inquire into and consider any matter referred to it by the Attorney General. No new matters were referred to the Commission during 1986-87.

COMPLETED PROJECTS

1. *Political Activity by Crown Employees*

During the past year, the Commission submitted to the Attorney General its *Report on Political Activity, Public Comment and Disclosure by Crown Employees*. The project was begun on December 16, 1985, when the Commission received a Reference from the Attorney General to inquire into and report on the law relating to these matters. An excerpt from the Letter of Reference, setting out the Terms of Reference for the project, appears at page 9 of the Commission's *Twenty-First Annual Report 1985-86*.

Upon receipt of the Letter of Reference, the Commission retained the services of Kenneth P. Swan, Esq., of the Ontario Bar, as Project Consultant. In addition, the Commission retained Kenneth Kernaghan, Esq., Professor of Public Administration and Politics, Brock University, to assist the Commission with research relating to the doctrine of political neutrality in the public service and its implications.

The Commission placed a notice in newspapers throughout the Province, inviting the submission of briefs and offering to hold public hearings. During eight days of public hearings, the Commission heard representations from a broad range of affected persons. In addition to oral representations, the Commission received some twenty-three written submissions.

At page 2 of the Report, the Commission describes the "essence" of the Reference, namely, "to identify the essential elements of the public interest in effective public administration on the one hand, and the individual freedoms of Crown employees on the other, and to strike a balance between those competing interests that, to the greatest extent possible, enhances rather than diminishes the contributions, individually and collectively, of those who serve the people of Ontario". The Commission emphasizes that "this complex and delicate task must be performed, moreover, within the exacting standards of constitutional guarantees set out in the *Canadian Charter of Rights and Freedoms*, a document still largely bereft of jurisprudential elaboration in this area".

Chapter 2 of the Report describes the doctrine of political neutrality, which has the status of a constitutional convention in Ontario, and which underlies the current restrictions on political activity and public comment by public servants.

Chapter 3 deals with present Ontario law, both common law and statutory, governing the right of public servants to engage in political activity and public comment concerning government policy, and the duties of public servants with respect to the confidentiality of government information. The chapter concludes with an analysis of the *Canadian Charter of Rights and Freedoms* and its potential impact upon the restrictions under the present law.

In order to place current Ontario restrictions in some perspective, chapter 4 contains a comparative analysis of the law in a number of other jurisdictions as it relates to political activity and public comment by public servants and confidentiality of government information. The chapter describes recent changes in the United Kingdom granting increased political rights to public servants, and American legislative attempts to protect public employees who "blow the whistle" by revealing confidential information relating to government wrongdoing.

Chapter 5 examines the case for reform of the existing law and describes the approach the Commission adopts in formulating its recommendations. The Commission's conclusions and recommendations, including the alternatives considered and rejected by the Commission, are set out in chapter 6.

Before offering its recommendations for reform in respect of political activity, public comment, and disclosure of government information, the Commission makes three structural proposals. The first would expand the jurisdiction of the two appeal boards created for Crown employees who are members of, or excluded from, the bargaining units created under the *Crown Employees Collective Bargaining Act*. All Crown employees would have the benefit of a statutory right of arbitration before the appropriate board and would have access to one of the two boards in order to determine any issues relating to the interpretation of the Commission's proposed rules governing political activity, critical comment, and disclosure of information.

The second structural proposal is that the proposed rules should apply to all Crown employees except those specifically excluded. In order to determine who should be excluded, the Report recommends that a review should be undertaken of all Crown agencies in order to identify those agencies that serve the Crown in capacities so dissimilar to the public service itself as to justify the exclusion of their employees from some or all of these rules.

The third structural proposal is for the creation of a new Office of Special Counsel, an office roughly akin to that which operates at the federal level in the United States. The main function of the Special Counsel, who would report to the Legislative Assembly, would be in relation to the Commission's "whistleblowing" recommendations, discussed below; but the Special Counsel would also serve as a confidential advisor for individual Crown employees in respect of the operation of the proposed new rules.

Turning to political activity and public comment, the Report deals first with the categorization of Crown employees for the purpose of restrictions on their activities in these two areas. The Commission recommends that the public service should be divided into two categories, namely, a "politically

restricted" category, and a category comprising all other Crown employees, the members of which would be free to engage in political activity and critical comment, subject to certain restrictions relating to candidature and certain standards of conduct. These recommendations do not apply to the Ontario Provincial Police.

The restricted category would be composed of (1) persons employed in line management positions, from a deputy minister to a branch director, and the equivalent positions in Crown agencies; (2) persons directly involved in the administration of justice, including provincial court judges, lawyers and laypersons representing the Crown before the courts, agencies, boards, and commissions; court registrars; masters; and, generally, chairmen, vice chairmen, registrars and members of all permanent agencies, boards, and commissions exercising adjudicative functions; (3) employees directly involved in the formulation of policy and budgets in the government or an agency; (4) employees employed in a position confidential to the Lieutenant Governor, a Crown minister, a judge, and certain other senior officials within the government or an agency; and (5) employees whose primary job function is to act in a public representative capacity as official spokespersons in the interests of the Crown or an agency. Appeal procedures are recommended for those persons who wish to challenge their placement in the restricted category.

Employees in the restricted category would be permitted to engage in municipal political activity, subject to the restrictions now set out in section 11 of the *Public Service Act* — for example, nonaffiliation with a provincial or federal political party — and subject, as well, to the granting of prior permission from an authority designated for that purpose. Employees in the restricted category would be prohibited from engaging in the following political activities: (1) candidature in a provincial or federal election, or serving as an elected representative in a provincial legislature or the Parliament of Canada, unless they first resign from Crown employment; (2) soliciting funds for a federal or provincial political party or candidate; (3) associating his or her position in the service of the Crown with any political activity; and (4) canvassing on behalf or otherwise actively working in support of a provincial or federal political party or candidate.

Employees not in the restricted category could become candidates in a federal or provincial election so long as they took a leave of absence. Rules concerning the commencement of their leave are proposed. Where the employee is not elected, he or she would be entitled to return to work and, generally, would be treated as though employed in the public service for the full period of the leave of absence. Subject to the restrictions described below, which would apply to all Crown employees, employees not in the restricted category would be free to engage in all municipal political activities.

As indicated, the Commission recommends that certain protections and political restrictions should be applicable to all Crown employees. It would be provided by statute that no employee could be compelled to take part in any political undertaking or to contribute to any political party. Legislation would provide, as well, for a code of conduct governing all Crown employees. The code of conduct would preclude an employee, except where on a

candidacy leave of absence, from undertaking any political activity during working hours or at his or her place of employment. Crown employees would not be permitted to engage in any political activity that would (1) amount to coercion or give rise to a reasonable apprehension of coercion by reason of their position with the Crown; (2) take improper advantage of their position in the service of the Crown; (3) produce a direct conflict with the interests of the Crown in connection with their duties; or (4) give rise to a reasonable apprehension, on the part of the public, of bias in the making of any adjudicative, allocative, or evaluative decision in the course of their duties.

The Crown would be entitled formally to notify an employee that a particular activity is proscribed and will be subject to disciplinary action. The Crown's notice and any disciplinary action would be subject to grievance and appeal procedures. Employees would be able to seek the advice of the Special Counsel concerning whether any contemplated action is likely to contravene the political restrictions.

Turning to critical public comment by Crown employees, which would include both favourable and unfavourable comment, the Commission recommends that employees in the restricted category should not engage in critical comment on government policy or action that identifies the employee or the comment with a political party. In addition, all Crown employees would be prohibited from engaging in critical comment where the comment (1) creates a direct conflict with the interests of the Crown in connection with the performance of their duties; (2) creates a reasonable apprehension of bias in the performance of duties that involve adjudicative, allocative, or evaluative decision making; (3) creates a reasonable apprehension that working relationships within the public service will be impaired; or (4) involves their own ministry or agency, except where the policy or action directly affects them in their personal capacity. These restrictions would not apply to Crown employees commenting in the course of their duties or participating in the lawful activities of a bargaining agent or employee association. Again, the advice of Special Counsel could be sought concerning the propriety of any proposed critical comment.

The last major section of the Report pertains to the disclosure of government information by Crown employees. The section deals first with general disclosure rules and then turns to the topic of "whistleblowing". With respect to disclosure, it is recommended in the Report that the oath of secrecy under section 10(1) of the *Public Service Act* should be abolished. The Commission's proposals are intended to be consistent with the proposed *Freedom of Information and Protection of Individual Privacy Act*. Accordingly, the right to determine matters relating to disclosure, including the right to delegate such authority, would reside in the proper government "head" envisaged by the proposed Act.

While the Commission's new statutory regime governing disclosure would follow generally the proposed freedom of information legislation, two significant changes are proposed. The Report recommends that no distinction should be made between government information in a "record", as defined in the proposed legislation, and information not in a record, or between information that has been specifically requested by a member of

the public and information that an employee wishes to divulge on his or her own initiative.

As an exception to the general disclosure rules, the Commission recommends that Crown employees who "blow the whistle", that is, disclose government information allegedly evidencing serious government wrongdoing, should be protected from disciplinary or other action where such disclosure is in the public interest. An employee wishing to disclose such information should be entitled either to rely on the common law defence in any subsequent proceedings brought against him or her, or on the Special Counsel procedure recommended by the Commission. Under that procedure, a Crown employee would be protected where he or she conveys to the Special Counsel information that the employee reasonably believes evidences (1) a violation of a statute, regulation, or rule; (2) mismanagement, waste of funds, or abuse of authority; (3) danger to health or safety; or (4) other wrongdoing of a similar nature by government or any agency, branch, division, or employee thereof, in the course of performing any public function or exercising any power conferred by law, that ought, in the public interest, to be disclosed.

The Commission proposes the establishment of a detailed procedure under which the Special Counsel would be under a duty to inquire into the employee's allegation, to require the appropriate government "head" to investigate and report to the Special Counsel concerning the allegation, and, under certain circumstances, to disclose the information to the public or to whatever person or body the Special Counsel thinks appropriate.

In the context of "whistleblowing", a separate set of rules would govern the disclosure of confidential government information. Such information, whether disclosed to the Special Counsel by an employee or in the possession of a government "head", could be required to be kept confidential at the request of the "head", subject, however, to an order of the court.

Finally, a review of federal criminal legislation in relation to disclosure is recommended in order to ensure that it is not inconsistent with the new provincial disclosure rules proposed by the Commission.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission may inquire into and consider any matter relating to reform of the law.

A. COMPLETED PROJECTS

1. *Law of Contract Amendment*

On February 2, 1987, the Commission submitted to the Attorney General its *Report on Amendment of the Law of Contract*. This project arose directly from the Commission's project on the Sale of Goods, completed in 1979. It was decided at the outset that no attempt would be made to

codify the whole law of contracts. Rather, the approach was to examine areas of contract law that appeared to be in need of reform.

The Commission appointed Professors S.M. Waddams and J.S. Ziegel, both of the Faculty of Law, University of Toronto, as joint Project Directors. The Commission was assisted by a Research Team and Advisory Group, comprising academics, practising lawyers and judges with expertise in the various areas under study.

The Report is divided into fourteen chapters, and includes approximately seventy-five recommendations. In the first substantive chapter of the Report, chapter 2, the doctrine of consideration is examined. The Commission concludes that, while consideration should continue to be the principal criterion of enforceability of contracts, the scope of enforceability should be enlarged in four classes of contracts case: first, one-sided modifications of existing obligations; secondly, promises made in return for benefits previously received by the promisor or by a third party; thirdly, firm offers; and fourthly, cases of subsequent reliance. In all these cases, there is no consideration for the promise, and yet these are promises that, in some circumstances and to some extent at least, most people would say ought to be enforced. The recommendations seek to bring the law into line with those expectations.

In chapter 3, the Commission examines the law of formal contracts, and recommends that the seal should be denied all legal effect in the law of contracts, and that a witnessed signed writing should take the place of the seal for the purposes of contract law.

Chapter 4 addresses the matter of third party beneficiaries and privity of contract. The Report recommends that legislation be enacted to provide that contracts for the benefit of third parties shall not be unenforceable for lack of consideration or want of privity.

In chapter 5, the Commission considers the provisions in the *Statute of Frauds* still in force in Ontario involving writing requirements relating to contracts or other obligations. The Report recommends repeal of the writing requirements with respect to the following: promises by executors and administrators to pay damages out of their own estates; agreements governed by section 5 of the Statute; representations concerning another's creditworthiness; and contracts not to be performed within one year.

With respect to writing requirements for contracts relating to land, it is recommended that the existing requirements be repealed, subject to a requirement that a contract for the sale of land is not enforceable on the evidence of the party alleging the contract unless such evidence is corroborated by some other material evidence. Finally, the chapter contains recommendations dealing with writing requirements in relation to guarantees and contracts of indemnity.

In chapter 6, it is recommended that legislation should be enacted conferring power on the courts to grant relief from unconscionable contracts. The proposed legislation would include a non-exhaustive list of

factors to guide the courts in determining questions of unconscionability, and would provide the courts with ample and flexible remedial powers.

In chapter 7, the Report proposes that the existing penalty doctrine to determine the validity of stipulated damages clauses be replaced by the general unconscionability test recommended in chapter 6, and that relief from forfeiture of payments made under a contract should be available on the same basis.

Chapter 8 recommends abolition of the parol evidence rule. In its place, the Commission recommends the enactment of legislation providing that evidence of oral agreement to terms not included in, or inconsistent with, a written document should be admissible to prove the real bargain between the parties. In addition, the proposed legislation would provide that conclusive effect not be attached to merger or integration clauses.

In chapter 9, the Report discusses the developing doctrine of good faith, and recommends that it be given legislative recognition in relation to the performance and enforcement of contracts.

Chapter 10 deals with minors' contracts. The Commission proposes that minors' contracts should not, as a general rule, be enforceable against them, but that minors should have the right to enforce their contracts. An important exception to the general rule of unenforceability would be where the court is satisfied that the contract was in the best interests of the minor. In addition, the Commission recommends the enactment of a number of provisions dealing with specific concerns related to the contractual capacity of minors, including: affirmation and repudiation of a contract by a minor; court approval of minors' contracts; the effect of property dispositions made pursuant to a contract that is unenforceable against a minor; minors' liability for tortious conduct associated with unenforceable minors' contracts; enforceability of guarantees of minors' obligations; and minors' contracts and agency.

Contracts that infringe public policy are discussed in chapter 11. It is recommended that existing common law doctrines regarding illegal contracts should be retained, but that the court should be given flexible powers to relieve against the consequences of illegality. With respect to contractual provisions that unreasonably restrain trade, the Commission recommends that, where the party seeking to enforce such a provision has acted in good faith and in accordance with reasonable standards of fair dealing, the court should have the power either to delete the provision and enforce the contract as so amended, or to so reduce the scope of the provision that, at the time the contract was entered into, the provision as so reduced would have been reasonable, and to give effect to the contract as modified. In addition, it is recommended that, where deletion or reduction in scope would so alter the bargain between the parties that it would be unreasonable to allow the contract to stand, the court should have the power to decline to enforce the contract.

Chapter 12 deals with misrepresentation. The Commission recommends that a representee should be able to rescind a contract that was induced by

misrepresentation, whether innocent or fraudulent, even though the contract has been wholly or partly performed. However, this recommendation would, in the case of innocent (including negligent) misrepresentations, be subject to a discretion in the court to deny rescission or declare it ineffective, awarding damages in lieu thereof. In addition, whether or not a contract is rescinded, and again with respect to innocent and negligent misrepresentations, it is proposed that the court should have power to allow just compensation by way of restitution, or for losses incurred in reliance on the representation.

In chapter 13, the Commission recommends that legislation be enacted to provide that, unless a contrary intention appears, a party to a contract may waive a provision inserted into the contract solely for his or her benefit.

Finally, chapter 14 addresses the complex subject of mistake and frustration in the law of contract. In view of the substantial uncertainty in the law of mistake, the Commission proposes the adoption of detailed legislation setting out grounds for relief, types of relief, and the kinds of considerations a court should take into account in determining whether or not to grant relief.

With respect to the law of frustration, it is recommended that the treatment of frustration doctrines recommended in the 1979 *Report on Sale of Goods* be adopted for the general law of contract. To this end, the Report recommends the enactment of provisions that would clarify when and to what extent relief on the ground of frustration should be available. In addition, so far as the consequences of a frustrated contract are concerned, the Commission proposes that a modified version of the scheme for relief following frustration set out in the new *Uniform Frustrated Contracts Act* should be adopted in Ontario in place of the scheme set out in the existing Ontario *Frustrated Contracts Act*.

2. *Law of Mortgages*

On March 31, 1987, the Commission submitted to the Attorney General its *Report on the Law of Mortgages*. The project began as part of the Commission's undertaking to review the entire law of property in Ontario. While work on the project was interrupted on a number of occasions, in October, 1981, the Commission appointed as Director of the Project Barry J. Reiter, Esq., then Associate Professor of Law at the Faculty of Law, University of Toronto. A Research Team of academic experts was engaged, and an Advisory Board was constituted, consisting of representatives of the legal profession, institutional lenders and consumer groups.

During the first stage of the project, submissions were invited and representatives of various groups interested in mortgage law were consulted, with a view to identifying issues requiring remedial legislation. Thereafter, research was conducted on a broad range of topics and recommendations for reform were formulated. The Advisory Board was consulted extensively at various stages of the project.

The Report reflects the general consensus of those persons consulted that the current law of mortgages is not completely unworkable; virtually no

one was of the opinion that the existing system warranted wholesale reform. Accordingly, the recommendations leave untouched several areas of mortgage law. Indeed, the Report states that the nature of mortgage transactions should, so far as is possible and just, be left to the market, so that competition will continue to ensure innovation and a wide variety of choice in mortgage financing.

On the other hand, almost everyone believed that there were specific areas in respect of which reform would be desirable. The Commission's recommendations for reform cover a broad range of issues, and are responsive to four general goals. First, they seek to effect a proper balance between the expeditious and efficient recovery of the debt by lenders and the protection to be given to the legitimate interests of borrowers, by reducing opportunities for both delaying legitimate realization procedures and overreaching on the part of lenders. Secondly, the recommendations attempt to centralize and rationalize the law of mortgages, so far as it is feasible and desirable to do so, in a single statute. Thirdly, certain recommendations seek to address a number of specific substantive problems, in respect of which it was thought either that the law has made inappropriate choices in the first instance, or that initially justifiable choices have been overtaken by the facts of modern mortgage financing. Finally, many of the recommendations reflect a growing recognition that a distinction should be made between "consumer" and "commercial" borrowers who give land as security for a debt.

In chapter 2, the Report describes various types of land security interest prevalent in Ontario, and recommends the enactment of a new *Land Security Act*, which would apply not simply to "mortgages", narrowly defined, but to every transaction, regardless of its form, that is intended to create a security interest in land. It is also proposed that this broad legislative scope should be reflected in new terminology, and that the term used for all agreements creating security interests in land should be "land security agreement".

Chapter 2 also considers the creation and nature of a security agreement. The Report recommends that a security agreement should not be enforceable by or against a borrower unless the borrower has signed a security agreement that contains an adequate description of the land, acknowledges the lender's security interest, and is in registrable form. A procedural mechanism to render defective security agreements enforceable is provided. Finally, the Commission recommends that it should no longer be possible to create a security interest in land by means of a deposit of title deeds.

In chapter 3, the Commission recommends the abolition or modification of certain doctrines believed to be anomalous or anachronistic, including the doctrines of consolidation, tacking, and clogs on the equity of redemption.

In chapter 4, the Report considers the legal trend towards consumer protection legislation for financially unsophisticated borrowers. The creation of a class of "protected borrower" is recommended, in respect of whom special rights would be conferred. A borrower would be a protected borrower if he or she occupies all or part of the secured property as a residence, or if he or she resides on certain kinds of property not exclusively residential in nature, where such property secures a loan that does not exceed a specified

amount. Other persons, such as a guarantor of a loan secured in the above manner, or the spouse of a protected borrower, would also be given the proposed protections.

Chapter 5 of the Report deals with certain issues of priorities among lenders, and recommends that, subject to certain conditions, priority should be given for future advances made pursuant to a security agreement, as well as for advances made to protect the property. The Commission further recommends a remedy for a borrower where a lender refuses to make advances under a security agreement that contemplates such advances. Finally, priority would be given to a lender where a security agreement with a protected borrower is renewed on terms specified in the original agreement.

In chapter 6, the Report addresses a number of substantive rights and obligations of the borrower and lender under a security agreement. It is recommended that a protected borrower should have the right to prepay the security agreement at any time, provided that the lender is fairly compensated according to a stipulated formula for the calculation of such compensation.

The Report proposes that a borrower should be entitled to receive a discharge of the security agreement, free of charge, where the obligation under the security agreement has been satisfied. A borrower would continue to have the responsibility for registering such a discharge.

The Commission recommends that a borrower, and other specified persons, should be entitled to receive a statement of account upon written request to the lender, and that the statement of account should contain certain specified information. Under the Commission's proposal, a borrower would be entitled to receive one statement each year without cost; provision of all other statements would be upon payment of a prescribed fee. A lender would be liable for damages that arise from reasonable reliance on an incorrect statement. Recommendations are made concerning amendments to a statement of account and the means by which such amendments are made known to those persons who have received an incorrect statement.

Chapter 6 of the Report also considers the competing policies concerning the use of due-on-sale clauses. The Commission recommends that, where a lender includes a due-on-sale clause in a security agreement, a borrower should be entitled, upon a *bona fide* sale to an unrelated purchaser, to repay the loan without penalty or prepayment compensation, and the Report contains recommendations respecting the determination of a *bona fide* sale. Certain other clauses, including due-on-encumbrance and due-on-negotiation clauses, would be unenforceable.

Finally, in chapter 6, two insurance issues are addressed. The Commission proposes that a borrower should not be required to insure the secured property for an amount exceeding its replacement value, and also makes recommendations with respect to the right of a protected borrower to use insurance proceeds to repair or reconstruct the secured property.

Chapter 7 is concerned with the disclosure of information to borrowers at various stages of their relationship with lenders. The Report recommends

that protected borrowers should be entitled to have specified information at the time of advertising and first inquiry, and further, more detailed, information at least five business days prior to the execution of the security agreement. All borrowers would be entitled to receive a copy of the security agreement, and every residential security agreement would contain prescribed terms specifying certain statutory rights and obligations of the parties to the agreement. It is further recommended that, upon a borrower's default, a lender should disclose specified information regarding the respective rights and remedies of the parties.

Chapter 7 also discusses the use of plain language as an important aspect of disclosure to protected borrowers. The Report recommends that plain language should be utilized in all disclosure statements given to protected borrowers, as well as in the security agreement. In an appendix to the Report, the Commission provides a model plain language residential security agreement as a precedent for lenders in fulfilling this plain language requirement.

In chapters 8, 9, and 10, the Commission considers the rights and remedies of borrowers and lenders upon default. In chapter 8, the Report recommends that a revised extra-judicial power of sale procedure should become the lender's primary remedy against the secured property. Judicial sales would be abolished, and foreclosure would become the remedy of final resort. It is proposed that, generally, a borrower should be entitled to a minimum four month delay period following default, during which the borrower could make efforts to refinance or sell the secured property. The Report also contains important recommendations regarding the appropriate standard of care that should be required of a lender, and his or her agent, in exercising the power of sale.

Chapter 9 of the Report discusses the lender's right of action on the borrower's personal covenant to pay the secured debt. As a general rule, there would be no change to the lender's right to recover the full debt. However, the Report recommends a procedure whereby a protected borrower who has transferred property subject to a security agreement may be relieved from liability on the personal covenant. This procedure provides safeguards for the lender's legitimate concerns regarding the creditworthiness of the purchaser.

Chapter 10 of the Report is concerned with various issues relating to possession of the secured property. As a general rule, a borrower would be entitled to possession until default. A protected borrower would be entitled to retain possession until the expiration of the minimum four month delay period after default, subject to certain exceptions. It is proposed that the appropriate standard of care of a lender, and his or her agent, in possession should be that of commercially reasonable care. The Report makes recommendations with respect to a lender's claim for expenses while in possession, including the lender's own remuneration for management of the property, as well as the costs of an agent.

Chapter 10 also addresses the rights of a lender *vis-à-vis* a tenant of the secured property, including the right to demand and receive rent and the right

to possession. In the latter connection, the Commission recommends that a lender taking possession of secured property subject to a binding lease should be subject to the obligations of a landlord under the *Landlord and Tenant Act*.

With respect to lenders in possession of property subject to a non-binding lease, the Report draws a distinction between commercial and residential tenancies. Residential tenancies that meet certain specified criteria would be binding on a lender in possession for a period of time equal to the unexpired term of that tenancy, but not less than 120 days and not more than one year from the date the lender takes possession. Subject to this proposal, the lender would have all the rights and be subject to all the obligations of a landlord under Part IV of the *Landlord and Tenant Act*.

Where the non-binding residential lease does not meet the proposed criteria, or where the non-binding lease is of commercial premises, a lender taking possession would be entitled to evict the tenant, to enter into a new binding lease, or to demand and receive rent from the tenant, without creating a new lease. Tenants in possession pursuant to non-binding leases would be entitled to a ten day notice period prior to eviction.

Finally, the Report recommends that a lender's right to distrain with respect to property of a protected borrower should be abolished.

In chapter 11, the Commission addresses various miscellaneous issues. It is recommended that the Rules of Civil Procedure should continue to govern the resolution of disputes in the context of land security transactions, subject to an amendment that would allow a Master of the Supreme Court of Ontario to hear applications under the proposed *Land Security Act*. In addition, the Commission makes proposals for reform in respect of the service of documents. Finally, the Commission recommends the creation of a Land Security Committee, a permanent, specialized committee of experts in matters relating to land security, the mandate of which would be to monitor the law and practice in the area and to advise the Minister of Consumer and Commercial Relations on the need for reform.

B. Projects In Process

1. *Administration of Estates of Deceased Persons*

Although some progress was made, during the past year, on the writing of the Commission's final Report, work was interrupted due to the priority accorded to the completion of the *Report on Political Activity, Public Comment and Disclosure by Crown Employees* and other commitments. The final Report will include chapters dealing with the following topics: the powers, duties, and liability of personal representatives; certain problems relating to beneficiaries; creditors and other claimants of the deceased; the transfer of assets of deceased persons; and the Surrogate Court.

The Commission originally intended to include in its Report a new *Administration of Estates Act*, which would bring together and revise relevant

portions of the *Trustee Act*, the *Estates Administration Act*, and the provisions governing practice under the *Surrogate Courts Act* and Rules. The new Act would also codify and revise a number of common law doctrines that now govern estate administration. However, in the past year, in order to expedite the completion of this project, it was decided to abandon the goal of preparing a Draft Bill.

Professor George W. Alexandrowicz, of the Faculty of Law, Queen's University, continues to assist the Commission on a consultative basis. In the early stages of the project, the Commission benefited from the assistance of an Advisory Committee of experts in estate administration, constituted under the chairmanship of Malcolm Archibald, Esq., QC, of the Ontario Bar.

2. *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

The Commission's study of the question whether the Hague Convention Concerning the International Administration of the Estates of Deceased Persons should be given effect in Ontario began some years ago as a separate project. The Commission subsequently decided to examine the Convention as part of its project on Administration of Estates of Deceased Persons, in the context of a general consideration of the estates of foreign decedents. In the past year that decision was reconsidered and reversed.

In order to expedite completion of the *Report on the Administration of Estates of Deceased Persons*, and because there does not appear to be any particular urgency with respect to the Hague Convention, which is not yet in force, work on the Convention, and on estates of foreign decedents generally, has been deferred for the time being.

3. *Basic Principles of Land Law*

Three research papers, containing recommendations for reform of the basic principles of land law, have been prepared and considered by the Commission over the course of this project. Work on the preparation of the final Report is proceeding.

4. *Positive and Restrictive Covenants Affecting Freehold Land*

This project involves a consideration of two fundamental issues in connection with covenants affecting freehold land. First, it examines whether positive covenants should be made enforceable against successors in title of the original covenantor. Secondly, it examines whether the present law of restrictive covenants is in need of reform. The project includes a review of the present law of covenants, in both Ontario and the United States, as well as a review of specific reform proposals from a variety of jurisdictions.

A research paper, prepared by Professor A.H. Oosterhoff, of the Faculty of Law, University of Western Ontario, was considered by the Commission in November, 1985. Originally, the subject matter of this research was

intended for inclusion in the Commission's final *Report on Basic Principles of Land Law.* In July, 1986, however, the decision was taken to complete and publish a separate *Report on Positive and Restrictive Covenants Affecting Freehold Land.*

Essentially all matters of policy arising out of the research have been decided by the Commission and the writing of the final Report has commenced. It is hoped to submit the final Report during the coming year.

5. *Timesharing*

This project has involved a study of the present law governing timesharing in Ontario, with a view to assessing the need for enabling and regulatory legislation in the Province.

The research for the project was conducted by a member of the legal research staff, and included an examination of timeshare legislation in a number of American jurisdictions. The research was considered by an Advisory Committee of experts early in 1985, and by the Commission later that year.

During the past year, a draft *Report on Timesharing* was prepared. The Commission hopes to be in a position to review the draft Report in the near future and to submit its final Report to the Attorney General in the coming months.

6. *The Law of Standing*

The Law of Standing Project is concerned with the question whether private individuals, who wish to initiate litigation in the public interest, should be granted increased access to the courts. The initial stages of the project, involving research and the articulation of reform issues, are described in previous Annual Reports. The Commission is now considering recommendations for reform, and it is anticipated that the Report will be completed during the coming year.

The Commission continues to be ably assisted by the Project Director, Professor W. A. Bogart, of the Faculty of Law, University of Windsor.

7. *Contribution Among Wrongdoers*

This project is directed by Professor John M. Evans, of Osgoode Hall Law School, York University. The project is concerned with the law governing the allocation of responsibility between two or more persons whose conduct has caused the same loss or damage, as well as with the law relating to contributory negligence.

During the course of the project, nine research papers were prepared dealing with the following topics: joint and several liability; joint wrongdoers to whom a right of contribution should be available; settlements and

contribution claims; defences to the right of contribution; assessment of contribution; procedural aspects of contribution claims; and contributory negligence. Following consideration of these papers by the Commission, a draft Report and draft legislation embodying the Commission's decisions were prepared by the Project Director. Unfortunately, work on the final Report was temporarily suspended pending completion of the Reference on Political Activity by Crown Employees.

Recently, in light of concerns about the operation of the doctrine of joint and several liability, and legislation in a number of American jurisdictions abrogating or modifying the rule, the Commission decided to re-examine the issue of liability *in solidum* of concurrent wrongdoers, whereby a plaintiff whose injury has been caused by the legal wrong of more than one defendant may recover judgment for his or her entire loss against any single defendant, provided that the damage is indivisible. A research paper was prepared by Professor George L. Priest, of Yale Law School, and the issues were debated by the Commission at a meeting at which a number of academic experts were also present. With the resolution of this matter, the Commission intends, once again, to turn its attention to preparation of the final Report and accompanying draft legislation for submission to the Attorney General in the summer of 1987.

8. *Land Held Subject to French Title*

This project, directed by R.E. Priddle, Esq., QC, former Director of the Legal and Survey Standards Branch, Ministry of Consumer and Commercial Relations, is concerned with conveyancing problems that arise in connection with land, including land held subject to French title, in respect of which there is no Crown patent.

A working paper prepared by the Project Director was considered by the Commission in November, 1986. Due to other commitments, writing of the final Report has been delayed. However, we intend to complete this project during the coming year.

9. *Remedies for Wrongful Interference with Goods*

This project examines the specific relief remedies of replevin and detinue, damages remedies, such as trespass, conversion and interference with a reversionary interest, and recaption of chattels.

Completion of a draft Report by the Project Directors was delayed for some time by the need to reconcile recommendations made in this project with several made in the project on Contribution Among Wrongdoers and in the recently completed *Report on Amendment of the Law of Contract*. Virtually all of these problems have now been solved.

The Commission has a draft Report, including draft legislation, from the Project Directors, which covers all policy issues except one unresolved issue arising from the Contracts Report. Preliminary work on the preparation of the final Report has commenced, and it is anticipated that the Report

and accompanying draft legislation will be submitted to the Attorney General in the coming year.

10. *Compensation for Personal Injury and Death*

This project was added to the Commission's programme in November, 1985, and is being directed by Professor Stephen M. Waddams, of the Faculty of Law, University of Toronto.

During the past year, five research papers were prepared dealing with the following topics: pre-trial losses; non-pecuniary loss, including compensation for loss of guidance, care and companionship under the *Family Law Act, 1986*, and monetary limits on non-pecuniary loss; loss of future earning capacity in the case of injury to and death of wage earners and non-wage earners; future care costs; collateral benefits; exemplary damages; pre-judgment interest; income tax considerations; and periodic payments and structured settlements. Early in 1987, the research papers were considered by an Advisory Committee of experts, comprising members of the judiciary and the practising profession, as well as representatives of government and the insurance industry.

It is expected that the Project Director will present his Report containing recommendations for reform to the Commission in June, 1987. The Commission hopes to be able to submit its final Report to the Attorney General in the autumn of that year.

11. *Liability of the Crown*

This project was added formally to the Commission's programme in February, 1986, and is being directed by Professor Peter W. Hogg, of Osgoode Hall Law School, York University.

The project examines the substantive and procedural law relating to the legal liability of the Crown in right of Ontario. The objectives of the project are to make the law fairer to both Crown and subject, to simplify the law, and to bring it into conformity with the *Canadian Charter of Rights and Freedoms*.

During the past year, substantial progress was made on the project. Research commenced on a number of topics, including the following: the history and theory of Crown liability; the liability of the Crown in tort; remedies available against the Crown; Crown privilege; the extent to which the law of estoppel binds the Crown; and the extent to which the Crown is bound by statute. In addition, research was commissioned, and received, dealing with the liability of the Crown in contract, and discovery and Crown proceedings.

An Advisory Board was constituted under the chairmanship of the Project Director, consisting of members of the judiciary and the practising profession, representatives of government, and academic experts. The

Advisory Board has met, and will continue to meet, to consider the research and recommendations generated by the project.

It is anticipated that the research will be substantially complete early in 1988, and that the Project Director will submit his Director's Report to the Commission in the spring of that year.

FUTURE PROGRAMME

The past year has witnessed the completion of three major Reports dealing with Political Activity by Crown Employees, the Law of Contract, and the Law of Mortgages. During the coming fiscal year, the Commission expects to submit to the Attorney General Reports on the following topics: Contribution Among Wrongdoers; Compensation for Personal Injury and Death; Remedies for Wrongful Interference with Goods; and Timesharing. In addition, several Reports are now being written and will be published as time and resources permit. These Reports are concerned with Positive and Restrictive Covenants Affecting Freehold Land; the Administration of Estates of Deceased Persons; Land Held Subject to French Title; and the Law of Standing.

In light of the anticipated completion during the next eighteen months of the projects referred to above, the Commission intends to review its programme in the near future with a view to undertaking new projects. As always, the Commission welcomes suggestions regarding areas of the law in need of reform.

GENERAL ACTIVITIES AND ACKNOWLEDGMENTS

Attached to this Report are six Appendices relating to the activities and staff of the Commission and to events of importance during the past year. Appendix A records the tribute of the Commission to the Honourable R. A. Bell and to Mr. W. R. Poole on their retirement. Appendix B records our sentiments upon the passing of Mr. Arthur A. Wishart. Appendix C deals with the activities of the Chairman during the period under review, and Appendix D lists the visitors to the Commission during the year. Appendix E sets out a list of Reports prepared and submitted by the Commission since its inception in 1964, together with a table indicating the extent to which legislation concerning our proposals has been enacted. Appendix F contains a list of the officers and permanent staff of the Commission.

The Commission regrets the retirement of its Secretary and Administrative Officer, Mrs. Diane Murdoch, who left us on August 8, 1986. We have indeed been fortunate to have Ms. Anne McGarrigle join us as our new Secretary and Administrative Officer.

We thank the staff of the Commission for another successful year, achieved in great part because of their strong commitment to their duties.

We also thank you, Mr. Attorney, and the senior officers of your Ministry for the interest you have taken in our work and the assistance that has been afforded to us.

All of which is respectfully submitted,

James R. Breithaupt
Chairman

H. Allan Leal
Vice Chairman

Earl A. Cherniak
Commissioner

J. Robert S. Prichard
Commissioner

Margaret A. Ross
Commissioner

March 31, 1987

APPENDIX A

TRIBUTE TO THE HONOURABLE RICHARD A. BELL, PC, QC, LLD, AND TO WILLIAM R. POOLE, QC

Extract from the minutes of the Ontario Law Reform Commission, June 9 and 10, 1986, on the retirement from the Commission of the Honourable Richard A. Bell, PC, QC, LLD, and William R. Poole, QC, prepared by Dr. Leal:

> Two of our esteemed colleagues will be leaving the Commission presently. They have each devoted almost twenty-two years to the cause of law reform as founding members of the Ontario Law Reform Commission. That represents half a professional lifetime and an awesome number of man hours.
>
> It would be difficult to overstate how much is owed to them and their work in the renewing and restructuring of our socio-legal system for the betterment of humankind. It can be said with certainty that their influence extends far beyond their home jurisdiction. We wish to record here how much we value their friendship. We shall miss them very much.

THE HONOURABLE R. A. BELL, PC, QC, LLD

Dick Bell brought much to this Commission. He has a bountifully stored and highly disciplined legal mind. At least part of this is attributable to the fact that he spent six years in formal legal education, three at the School of Law, University of Toronto, where he performed with distinction, and three years at the Osgoode Hall Law School, graduating as a medallist. His lifetime in politics and government gave him a keen sense of relevance when it came to deciding what was in the public weal. He imparted this to us.

At one and the same time, having a mind for detail but never losing sight of the global picture, his efforts were always on track and his energy boundless. He taught us to be thorough without ceasing to be imaginative.

He is perhaps best known outside the Commission for his powerful dissent on the issue of the merger of the County and Supreme Courts in our *Report on the Administration of Courts*. Since his powers of persuasion are so seductive, he is even better known to us for the number of times that the initial Bell minority view has carried the day on vital issues. The like of Richard Bell is not found often enough in any professional group. How fortunate and privileged we were that he cast his lot with us.

WILLIAM R. POOLE, QC

Bill Poole is *sui generis*. One has only to mention his name to a newly-found acquaintance to establish common ground for an hour's delightful exchange on a favourite and unique person.

His roots in Neepawa, the self-proclaimed Keystone of the Keystone Province of Manitoba, are well known because he made them so by the telling.

He was educated at the University of Manitoba and McGill University in English, tested and tempered by the rigours of the North Atlantic in the RCNVR on HMCS Buctouche, and legally educated in the veterans classes at the Osgoode Hall Law School following World War II. These experiences all served to stamp Bill Poole with a commanding intellect in most areas of human experience. His chief preoccupation ever since has been to deny this fact.

He is one of the most literate people that one could know and the breadth of his taste in reading material is quite intimidating.

He has served the people of his adopted province competently and unselfishly in a variety of roles, including Counsel to the Milk Marketing Board and the Williams Commission on Freedom of Information and Privacy, in addition to his long and valuable service on the Ontario Law Reform Commission. This broad experience, combined with the insights gained from his thriving and varied legal practice in London, enabled him to influence, in an incisive way, the debate on both substantive and procedural issues. For those of us inside the Commission, perhaps his greatest contribution was his uncommon ability to take the rough edge off serious exchanges of opinion. He encouraged us not to take ourselves too seriously.

It has been for all of us one of the bonuses of professional life to have Bill Poole as a colleague and close personal friend.

APPENDIX B

TESTIMONIAL TO ARTHUR ALLISON WISHART, QC

Extract from the Minutes of the Ontario Law Reform Commission, December 9, 1986.

The Commission agreed to approve the following tribute to Mr. Wishart, which was prepared by Dr. Leal:

The Ontario Law Reform Commission has lost one of its closest friends and staunchest supporters. Arthur Allison Wishart, former Attorney General for Ontario, died on Sunday, November 23, 1986.

Elected to the Ontario Legislature from Sault Ste. Marie in 1963, he was catapulted into the office of the Attorney General for Ontario on March 25, 1964, in uniquely challenging circumstances.

With the exception of a short term at the close of his political career in 1971 as Minister of Consumer and Commercial Relations, he served as Chief Law Officer of the Crown in Ontario and discharged his duties with infinite patience, consummate skill, uncommon wisdom and great dignity.

These were the formative years of the Ontario Law Reform Commission and the epoch of the McRuer Royal Commission on Civil Rights in Ontario. To both of these socio-legal reform institutions he gave sustaining support and constant guidance. He was wont to say on public occasions that the recommendations in the reports of the Ontario Law Reform Commission were the foundation of his legislative programme. With that type of challenge and support we were driven to greater efforts and excellence. Human institutions inevitably reflect the influence of their founders and mentors. Contemporary society has reason to be deeply grateful to the late Arthur Wishart.

We mourn his death and offer our deepest sympathy to his family. May their grief be somewhat assuaged by the sure knowledge that it is shared by the host of his friends and admirers, including all of us at the Ontario Law Reform Commission.

APPENDIX C

ACTIVITIES OF THE CHAIRMAN

1986

April 7	Attended a lunch given by the Attorney General for the retiring and new Commissioners in the Members' Dining Room at the Ontario Legislature.
April 17	Participated in the workshop on law reform at the Law Day 1986 events, Bingeman Park, Kitchener.
April 21	Met with the Honourable John Kelly and the Honourable John Engler, both members of the Michigan State Senate; and R. F. Chaloner, QC, Deputy Attorney General, and members of his staff, concerning the establishment of a Committee on Ontario-Michigan Relations.
April 25	Attended the Fourth Annual Senior Women's Conference presented by the Affirmative Action Program for the Ministry of the Attorney General.
May 22-23	Attended the 15th anniversary celebrations of the Law Reform Commission of Canada, in Ottawa, including a Seminar on the Future of Law Reform presented jointly by the Law Reform Commission of Canada and the Law Reform Conference of Canada. Dr. H. Allan Leal, the Honourable R. A. Bell, Mr. Earl A. Cherniak, Dean J. Robert S. Prichard and Mrs. Margaret A. Ross also attended.
August 10	Attended the Law Reform Conference of Canada annual meeting, in Winnipeg, Manitoba.
August 11-15	As a Commissioner for Ontario, attended the annual meeting of the Uniform Law Conference of Canada, in Winnipeg, Manitoba.
August 15-21	As a member of the National Council, attended the annual meeting of the Canadian Bar Association in Edmonton, Alberta.
September 7-13	Attended the 8th Commonwealth Law Conference, including meetings of the Commonwealth Law Reform Agencies, in Ocho Rios, Jamaica.
September 27	Elected an Honorary Fellow of the Canadian School of Management in Toronto and was the guest speaker at their Convocation.

October 1	Attended a dinner for the Commissioners of the Law Reform Commission of Canada and their advisors studying the Criminal Law Project, at Osgoode Hall, Toronto.
October 9	Attended the luncheon meeting of the Empire Club of Canada as a head table guest, at which event the Attorney General of Ontario was the guest speaker.
October 14	Guest speaker at a dinner meeting of The Advocates Society to outline the Commission's current programme and future plans. Mr. Earl A. Cherniak and Mrs. Margaret A. Ross were also present.
October 16-18	Attended a Conference on Damages for Personal Injury at the Civil Law Section of the University of Ottawa Faculty of Law, in Ottawa.
October 29-November 1	Attended the National Seminar on Professional Liability, sponsored by the Canadian Institute for the Administration of Justice, in Vancouver, B.C.
November 5	Attended a Public Forum in Toronto organized by Persons United for Self-Help/Ontario (PUSH), at which Mr. Earl A. Cherniak was a debater on the topic of the future role of the courts and the insurance industry.
November 21	Guest speaker at the Rotary Club of Toronto (Black Creek), in Toronto.
December 2	Guest speaker at the East York Kiwanis Club, at Fantasy Farm, Toronto.

APPENDIX D

VISITORS TO THE COMMISSION

1986

April 9	Mr. Douglas Marshall, Executive Secretary of the Public Service Association of the Northwest Territories, visited the Commission to discuss materials on the Project on Political Activity by Crown Employees.
April 11	Anthony Lucky, Esq., Corporate Secretary and In-House Counsel of the Royal Bank of Trinidad and Tobago Limited, met with the Chairman and Vice Chairman to discuss matters of law reform in Trinidad and Tobago.
April 14	Dr. Karl Friedmann, former British Columbia Ombudsman and currently a radio broadcaster with CJOR in Vancouver, B.C. Professor Clifford H. C. Edwards, QC, Chairman of the Law Reform Commission of Manitoba, visited the Commission to discuss the future programme of the Law Reform Conference of Canada.
April 21	Lieutenant Colonel H. F. Whitehorne, President of the Jamaica Bar Association, and Lloyd W. Perry, Esq., QC, visited the Commission to discuss plans for the 8th Commonwealth Law Conference, and particularly those plans dealing with the Commonwealth Law Reform Agencies meeting held on September 10 at Ocho Rios, Jamaica.
August 5	Michael J. Roux, Esq., Chairman, Motor Accidents Board of Australia, visited the Commission to discuss insurance studies and materials being developed in Ontario in that area.
September 24	Paul Byrne, Esq., Commissioner of the New South Wales Law Reform Commission, visited to discuss the Commission's *Report on Class Actions*. Ms. Patricia Richardson, Mr. Mel Springman and Mr. Larry Fox were present to assist in the discussions.

APPENDIX E

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

	Title	Date of Report	Original Legislation Concerning Commission Proposals
1.	Report No. 1 [The Rule Against Perpetuities]	February 1, 1965	*The Perpetuities Act, 1966*, S.O. 1966, c. 113
2.	Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	March 1, 1966	*do.*
3.	Report No. 2 [The Wages Act: Assignment of Wages]	March 3, 1965	*The Wages Amendment Act, 1968*, S.O. 1968, c. 142
4.	Report No. 3 on Personal Property Security Legislation	May 28, 1965	*The Personal Property Security Act, 1967*, S.O. 1967, c. 72
5.	Report No. 3A on Personal Property Security Legislation	May 18, 1966	*do.*
6.	Report on The Evidence Act: Admissibility of Business Records	February 16, 1966	*The Evidence Amendment Act, 1966*, S.O. 1966, c. 51, s. 1
7.	Report on The Mechanics' Lien Act	February 22, 1966	*The Mechanics' Lien Act, 1968-69*, S.O. 1968-69, c. 65
8.	Supplementary Report on The Mechanics' Lien Act	May 26, 1967	*do.*
9.	Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See *The Mechanics' Lien Amendment Act, 1975*, S.O. 1975, c. 43 *The Ministry of Transportation and Communications Creditors Payment Act, 1975*, S.O. 1975, c. 44 *The Public Works Creditors Payment Repeal Act, 1975*, S.O. 1975, c. 45
10.	Report on The Execution Act: Exemption of Goods from Seizure	December 9, 1966	*The Execution Amendment Act, 1967*, S.O. 1967, c. 26
11.	Report on The Law of Condominium	March 6, 1967	*The Condominium Act, 1967*, S.O. 1967, c. 13

	Title	Date of Report	Original Legislation Concerning Commission Proposals
12.	Report on the Basis for Compensation on Expropriation	September 21, 1967	*The Expropriations Act, 1968-69*, S.O. 1968-69, c. 36
13.	Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	*The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968*, S.O. 1968, c. 120
14.	Annual Report 1967	January 15, 1968	Not applicable
15.	Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	January 19, 1968	*Divorce Act*, S.C. 1967-68, c. 24, s. 26
16.	Report on the Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	*The Succession Law Reform Act, 1977*, S.O. 1977, c. 40 See *The Registry Amendment Act, 1978*, S.O. 1978, c. 8, s. 1
17.	Report on The Protection of Privacy in Ontario	September 10, 1968	See *The Consumer Reporting Act, 1973*, S.O. 1973, c. 97
18.	Report on Section 183 of The Insurance Act	October 3, 1968	—
19.	Report on Trade Sale of New Houses	October 4, 1968	See *The Ontario New Home Warranties Plan Act, 1976*, S.O. 1976, c. 52
20.	Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	*The Landlord and Tenant Amendment Act, 1968-69*, S.O. 1968-69, c. 58
21.	Report on Limitation of Actions	February 3, 1969	See *The Highway Traffic Amendment Act (No. 2), 1975*, S.O. 1975, c. 37 *The Fatal Accidents Amendment Act, 1975*, S.O. 1975, c. 38 *The Trustee Amendment Act, 1975*, S.O. 1975, c. 39
22.	Second Annual Report 1968	April 7, 1969	Not applicable
23.	Report on the Age of Majority and Related Matters	June 3, 1969	*The Age of Majority and Accountability Act, 1971*, S.O. 1971, c. 98

	Title	Date of Report	Original Legislation Concerning Commission Proposals
24.	Report on the Status of Adopted Children	June 3, 1969	*The Child Welfare Amendment Act, 1970*, S.O. 1970, c. 96, s. 23
25.	Report on Family Law, Part I: Torts	November 4, 1969	*The Family Law Reform Act, 1978*, S.O. 1978, c. 2 (partial implementation)
26.	Report on Section 20 of The Mortgages Act	March 12, 1970	*The Mortgages Amendment Act, 1970*, S.O. 1970, c. 54, s. 1
27.	Report on Family Law, Part II: Marriage	April 6, 1970	*The Civil Rights Statute Law Amendment Act, 1971*, S.O. 1971, c. 50, s. 55 (partial implementation) *The Marriage Act, 1977*, S.O. 1977, c. 42
28.	Third Annual Report 1969	April 20, 1970	Not applicable
29.	Report on Actions Against Representatives of Deceased Persons	November 30, 1970	*The Trustee Amendment Act, 1971*, S.O. 1971, c. 32, s. 2
30.	Report on the Coroner System in Ontario	January 25, 1971	*The Coroners Act, 1972*, S.O. 1972, c. 98
31.	Report on Sunday Observance Legislation	February 26, 1971	*The Retail Business Holidays Act, 1975*, S.O. 1975 (2nd Session), c. 9 *Courts of Justice Act, 1984*, S.O. 1984, c. 11, s. 134
32.	Report on Land Registration	March 23, 1971	See *The Corporations Tax Amendment Act (No. 2), 1979*, S.O. 1979, c. 89 *Land Registration Reform Act, 1984*, S.O. 1984, c. 32
33.	Fourth Annual Report 1970	March 31, 1971	Not applicable
34.	Report on The Change of Name Act	May 31, 1971	*The Change of Name Amendment Act, 1972*, S.O. 1972, c. 44 *Change of Name Act, 1986*, S.O. 1986, c. 7
35.	Report on The Mortgages Act, Section 16	June 18, 1971	—
36.	Report on Development Control	September 28, 1971	*The Planning Amendment Act, 1973*, S.O. 1973, c. 168, s. 10

	Title	Date of Report	Original Legislation Concerning Commission Proposals
37.	Report on Powers of Attorney	January 11, 1972	*The Powers of Attorney Act, 1979*, S.O. 1979, c. 107 *Powers of Attorney Amendment Act, 1983*, S.O. 1983, c. 74 *Mental Health Amendment Act, 1983*, S.O. 1983, c. 75
38.	Report on Occupiers' Liability	January 11, 1972	*The Occupiers' Liability Act, 1980*, S.O. 1980, c. 14
39.	Report on Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
40.	Report on Review of Part IV of The Landlord and Tenant Act	March 31, 1972	*The Landlord and Tenant Amendment Act, 1972*, S.O. 1972, c. 123
41.	Fifth Annual Report 1971	March 31, 1972	Not applicable
42.	Report on the Non-Possessory Repairman's Lien	October 4, 1972	—
43.	Report on the Administration of Ontario Courts, Part I	February 26, 1973	See *The Administration of Courts Project Act, 1975*, S.O. 1975, c. 31 *The Judicature Amendment Act (No. 2), 1977*, S.O. 1977, c. 51, s. 9 *Courts of Justice Act, 1984*, S.O. 1984, c. 11, ss. 19 and 25
44.	Sixth Annual Report 1972	March 31, 1973	Not applicable
45.	Report on the Administration of Ontario Courts, Part II	May 23, 1973	See *The Administration of Courts Project Act, 1975*, S.O. 1975, c. 31
46.	Report on Family Law, Part III: Children	September 25, 1973	*The Child Welfare Amendment Act, 1975*, S.O. 1975, c. 1 (partial implementation) *The Succession Law Reform Act, 1977*, S.O. 1977, c. 40 (partial implementation)

	Title	Date of Report	Original Legislation Concerning Commission Proposals
			The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)
			See *Children's Law Reform Amendment Act, 1982*, S.O. 1982, c. 20
47.	Report on The Solicitors Act	September 28, 1973	*Courts of Justice Act, 1984*, S.O. 1984, c. 11, s. 214(6)
48.	Report on Motor Vehicle Accident Compensation	November 6, 1973	—
49.	Report on the Administration of Ontario Courts, Part III	December 17, 1973	*The Judicature Amendment Act, 1975*, S.O. 1975, c. 30 (partial implementation)
			See *The Administration of Courts Project Act, 1975*, S.O. 1975, c. 31
			The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52 (partial implementation)
50.	Report on Family Law, Part IV: Family Property Law	February 8, 1974	*The Succession Law Reform Act, 1977*, S.O. 1977, c. 40 (partial implementation)
			The Family Law Reform Act, 1978, S.O. 1978, c. 2 (partial implementation)
			Family Law Act, 1986, S.O. 1986, c. 4 (partial implementation)
			See *The Land Titles Amendment Act, 1978*, S.O. 1978, c. 7
			The Registry Amendment Act, 1978, S.O. 1978, c. 8

	Title	Date of Report	Original Legislation Concerning Commission Proposals
51.	Report on Family Law, Part V: Family Courts	February 8, 1974	See *The Unified Family Court Act, 1976*, S.O. 1976, c. 85 *The Children's Probation Act, 1978*, S.O. 1978, c. 41 (partial implementation)
52.	Seventh Annual Report 1973	May 6, 1974	Not applicable
53.	Report on the International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	*The Succession Law Reform Act, 1977*, S.O. 1977, c. 40, s. 42
54.	Eighth Annual Report 1974	March 31, 1975	Not applicable
55.	Report on Family Law, Part VI: Support Obligations	April 18, 1975	*The Succession Law Reform Act, 1977*, S.O. 1977, c. 40 (partial implementation) *The Family Law Reform Act, 1978*, S.O. 1978, c. 2
56.	Report on Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	*The Religious Organizations' Lands Act, 1979*, S.O. 1979, c. 45 *The Anglican Church of Canada Act, 1979*, S.O. 1979, c. 46 *The Registry Amendment Act, 1979*, S.O. 1979, c. 94, s. 17 *Charities Accounting Amendment Act, 1982*, S.O. 1982, c. 11 *Mortmain and Charitable Uses Repeal Act, 1982*, S.O. 1982, c. 12, s. 1(1)
57.	Report on Landlord and Tenant Law	March 15, 1976	*The Residential Tenancies Act, 1979*, S.O. 1979, c. 78 (partial implementation)
58.	Report on the Law of Evidence	March 29, 1976	—
59.	Ninth Annual Report 1975	March 31, 1976	Not applicable
60.	Report on Changes of Name	August 16, 1976	*The Change of Name Amendment Act, 1978*, S.O. 1978, c. 28

	Title	Date of Report	Original Legislation Concerning Commission Proposals
			The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)
			Change of Name Act, 1986, S.O. 1986, c. 7 (partial implementation)
			Vital Statistics Amendment Act, 1986, S.O. 1986, c. 9 (partial implementation)
61.	Report on the Impact of Divorce on Existing Wills	February 28, 1977	*The Succession Law Reform Act, 1977*, S.O. 1977, c. 40, s. 17(2)
62.	Tenth Annual Report 1976	March 31, 1977	Not applicable
63.	Eleventh Annual Report 1977	March 31, 1978	Not applicable
64.	Report on Sale of Goods	March 30, 1979	—
65.	Twelfth Annual Report 1978	March 30, 1979	Not applicable
66.	Report on Products Liability	November 16, 1979	—
67.	Thirteenth Annual Report 1979	March 31, 1980	Not applicable
68.	Report on the Enforcement of Judgment Debts and Related Matters, Part I	February 20, 1981	—
69.	Report on the Enforcement of Judgment Debts and Related Matters, Part II	March 31, 1981	*Wages Amendment Act, 1983*, S.O. 1983, c. 68 (partial implementation)
			Proceedings Against the Crown Amendment Act, 1983, S.O. 1983, c. 88
			Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 177 (partial implementation)
			Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)
70.	Report on the Enforcement of Judgment Debts and Related Matters, Part III	March 31, 1981	Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)
71.	Fourteenth Annual Report 1980-81	March 31, 1981	Not applicable
72.	Report on Witnesses Before Legislative Committees	September 11, 1981	—
73.	Report on Class Actions	March 31, 1982	—

	Title	Date of Report	Original Legislation Concerning Commission Proposals
74.	Fifteenth Annual Report 1981-82	March 31, 1982	Not applicable
75.	Report on the Enforcement of Judgment Debts and Related Matters, Part IV	March 31, 1983	—
76.	Report on the Enforcement of Judgment Debts and Related Matters, Part V	March 31, 1983	*Creditors' Relief Amendment Act, 1985*, S.O. 1985, c. 1 (partial implementation)
77.	Report on Powers of Entry	March 31, 1983	—
78.	Sixteenth Annual Report 1982-83	March 31, 1983	Not applicable
79.	Report on the Law of Trusts	March 30, 1984	—
80.	Seventeenth Annual Report 1983-84	March 30, 1984	Not applicable
81.	Report on Human Artificial Reproduction and Related Matters	March 15, 1985	—
82.	Twentieth Anniversary Report 1984-85	September 1, 1985	Not applicable
83.	Twenty-First Annual Report 1985-86	March 31, 1986	Not applicable
84.	Report on Political Activity, Public Comment and Disclosure by Crown Employees	June 27, 1986	—
85.	Report on Amendment of the Law of Contract	January 15, 1987	—
86.	Report on the Law of Mortgages	March 31, 1987	—
87.	Twenty-Second Annual Report 1986-87	March 31, 1987	Not applicable

Many of the Commission's earlier Reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8.

APPENDIX F

OFFICERS AND PERMANENT STAFF
ONTARIO LAW REFORM COMMISSION

Chairman	James R. Breithaupt, CStJ, CD, QC, MA, LLB
Vice Chairman	H. Allan Leal, OC, QC, LLM, LLD, DCL
Commissioners	Earl A. Cherniak, QC J. Robert S. Prichard, MBA, LLM Margaret A. Ross, BA (Hon.), LLB
Counsel	M. Patricia Richardson, MA, LLB
Secretary and Administrative Officer	Anne McGarrigle, LLB
Senior Legal Research Officer	M. A. Springman, MA, MSc, LLB
Legal Research Officers	Larry M. Fox, LLB Marilyn R. Leitman, BA, LLM Judith A. Bellis, BA, LLB J. Jody Morrison, BA (Hon.), LLM
Administrative Assistant	Beverley G. Woodley
Secretary to Chairman	Stephanie Hlynka
Librarian	Elizabeth N. Page, BA
Secretary to Counsel	D. M. Halyburton
Secretary to Administrative Officer	Mary Rose Betinvieh, BAA
Secretaries to Legal Research Officers	Cora Calixterio Sharon Nagasaka
Receptionist	Mary M. O'Hara